

REMARKS

Claims 1-7, 9-30 and 38-42 were pending. Claims 2-3, 8-30 and 40 are cancelled. No new matter is introduced.

STATEMENT ACCOMPANYING PETITION TO CLAIM BENEFIT UNDER 35 USC 120, 121 OR 365(c) OF A PRIOR COPENDING NONPROVISIONAL APPLICATION OR INTERNATIONAL APPLICATION DESIGNATING THE UNITED STATES OF AMERICA (37 C.F.R. 1.78(a)(3))

Applicant has filed a petition to claim the benefit of priority application no. 10/127,395, filed 4/19/2002 in accordance with 35 USC §120.

The instant application was filed on 12/31/2003 claiming the benefit of U.S. Provisional application No. 60/437,359, filed on Sep. 31, 2002, Provisional application No. 60/437,205, filed on Dec. 31, 2002, and Provisional application No. 60/478,661, filed on Jun. 13, 2003. Applicant intended to also claim the benefit (as a continuation-in-part) of U.S. Ser. No. 10/127,395, filed 4/19/2002, which was pending at the time of filing of the instant application. U.S. Ser. No. 10/127,395 was issued as U.S. Pat. No. 7,025,774 on 4/11/2006. U.S. Ser. No. 10/127,395 has at least one inventor in common with the instant application, specifically, Don Alden.

The entire delay in this claim of priority was unintentional. In fact, the instant application was purposefully filed before the issuance of 10/127,395 in order to claim priority to 10/127,395's file date of 4/19/2002 as a co-pending application. Such intent of priority claim was indicated in the specification of the instant application, which cited and incorporated by reference 10/127,395 as a "commonly assigned, copending U.S. patent application" ([0097]), even though such claim language may not have met the formal requirement for proper priority claim.

Rejections under 35 USC §102

Claims 1, 4-7, 38-39 and 41-42 stand rejected under §102(e) as anticipated by Briggs et al (US 7344507).

Under the amended priority claim, Briggs no longer qualifies as a prior art against the instant application and the Applicant respectfully requests that the rejections under 35 USC §102 based on Briggs be withdrawn.


CONCLUSION

It is submitted that the present application is in form for examination, and such action is respectfully requested. The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 50-4634 (Docket No. PEL-2785). Applicant respectfully requests entry of these amendments for prosecution in this application.

Respectfully submitted,
GOODWIN PROCTER LLP

Date: 8/4/10

135 Commonwealth Drive
Menlo Park, CA 94025
Tel: 650 752-3106
Customer No. 77845



David Xue, Reg. No. 54,554